

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SER:GEO:ATL:TL-N-5143-99  
CLRountree

date: January 31, 2000

to: District Director, Georgia District  
Attention: Mr. Michael D. Kelley  
CEP Manager, Group 1224  
Koger Center, Stop 616-D

from: District Counsel, Georgia District, Atlanta

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subject: Request for Advice

Taxpayer: [REDACTED]

Taxable Years Ended August 31, [REDACTED], August 31, [REDACTED],  
and August 31, [REDACTED]  
E.I.N.: [REDACTED]  
[REDACTED]

DISCLOSURE STATEMENT

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This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This is in response to the memorandum dated August 17, 1999 from Coordinated Examination Program Manager Michael Kelley (Mr. Kelley) requesting assistance concerning three "protective claims" filed on [REDACTED] (as perfected on [REDACTED] and supplemented on [REDACTED]

██████████) for refund of interest on income tax deficiencies assessed against ██████████  
(██████) for the taxable years ended August 31, ██████, August 31, ██████, and August 31, ██████ under the authority of Sequa Corp. v. United States, 83 AFTR2d 99-2179 (S.D.N.Y. 1998). Mr. Kelley's memorandum followed ██████'s request that the Examination Division submit ██████'s formal claims for Field Service Advice.

At the time of Mr. Kelley's request for advice, Mr. Kelley had been advised that all refunds claims involving excessive overpayment interest under Sequa Corp. should be placed in suspense. However, the Internal Revenue Service's National Office had also issued numerous Field Service Advice memoranda. In addition, we understand that instructions that had been issued to local districts require advice from District Counsel on the allowance of claims under Sequa Corp. Consequently, Mr. Kelley's memorandum requests advice as to whether the refund claims should be allowed and paid or placed in suspense until a more specific ruling is issued by Department of Treasury or the Internal Revenue Service.

Based on the following discussion, we conclude that the Internal Revenue Service (Service) assessed excessive underpayment interest under I.R.C. §6601 for the years ended August 31, ██████, August 31, ██████, and August 31, ██████. Interest on such deficiencies properly accrued on such deficiencies during the following periods:

<u>Year Ended</u>	<u>Total Deficiency</u>	<u>Portion of Deficiency Subject to Interest</u>	<u>Proper Period for Interest Accrual</u>
██████████	\$ ██████████	\$ ██████████	██████████ - ██████████
			██████████ - ██████████
			██████████ - ██████████

Therefore, subject to the recommended actions set forth on pages 27 and 28 of this memorandum, we recommend that the Service make appropriate abatements of excessive deficiency interest under I.R.C. §6601 and issue refunds of such excessive interest for the years ended August 31, ██████, August 31, ██████, and August 31, ██████.

#### ISSUE

After allowing claims for refunds of excessive deficiency interest determined under the AOD issued on May Dep't Stores Co. v. United States, whether ██████ is entitled to refunds of the following additional interest improperly accrued under I.R.C. §6601(a) on income tax deficiencies assessed for the years ended August 31, ██████, August 31, ██████, and August 31, ██████ for the following periods:

- a. From [REDACTED] through [REDACTED] on the deficiency of \$ [REDACTED] for the year ended August 31, [REDACTED].
- b. From [REDACTED] through [REDACTED] on the deficiency of \$ [REDACTED] for the year ended August 31, [REDACTED].
- c. From [REDACTED] through [REDACTED] on \$ [REDACTED] of the deficiency totaling \$ [REDACTED] for the year ended August 31, [REDACTED].
- d. From [REDACTED] through [REDACTED] on \$ [REDACTED] of the deficiency for the year ended August 31, [REDACTED].

U.I.L.: 6601.02-01; 6601.08-00

General Facts

[REDACTED] filed consolidated U. S. Corporation Income Tax Returns (Forms 1120) for fiscal years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED]. [REDACTED]'s Forms 1120 were due and filed on the following dates:

<u>Taxable Year Ended</u>	<u>Due Date under I.R.C. §6072</u>	<u>Extended Due Date Under I.R.C. §6081</u>	<u>Date Filed</u>
[REDACTED]	[REDACTED]	[REDACTED]*	[REDACTED]

\* Extended under I.R.C. §7503

Tax Liabilities, Payments, and Credit Elections on [REDACTED]'s Returns

On its Forms 1120, [REDACTED] reported the following tax liabilities, payments and credits, and overpayments, and made the following elections under I.R.C. §6513(d) and Treasury Regulation §301.6402-3(a)(5) related to such overpayments:

<u>Taxable Year Ended</u>	<u>Reported Tax Liability</u>	<u>Claimed Payments/ Credits</u>	<u>Amount Elected for Credit to Estimated Tax for Subsequent Year</u>	<u>Subsequent Taxable Year</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	Ended [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Ended [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	Ended [REDACTED]

Applications/Refunds of Overpayments Claimed on [REDACTED]'s Forms 1120

[REDACTED] did not designate on its Forms 1120 or attachments to such Forms 1120 that any portion of its overpayments for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED] be applied to installments other than the first quarterly installment of estimated tax for the respective succeeding taxable year.

The Service applied and refunded the overpayments claimed on [REDACTED]'s Forms 1120 as follows:

Year ended August 31, [REDACTED]

Amount Applied to First Installment of Estimated Tax Due on [REDACTED] for Year Ended [REDACTED]	\$ [REDACTED]
Amount Applied to Other Liability	[REDACTED]
Total Claimed Overpayment	\$ [REDACTED]

Year Ended August 31, [REDACTED]

Total Amount Applied to 1st Installment of Estimated Tax Due on [REDACTED] for Year Ended [REDACTED]	\$ [REDACTED]
Amount Applied to Other Liabilities	[REDACTED]
Refund Issued to [REDACTED] on [REDACTED]	[REDACTED]
Total Claimed Overpayment	\$ [REDACTED]

Year Ended August 31, [REDACTED]

Total Amount Applied to 1st Installment of Estimated Tax Due on [REDACTED] for Year Ended [REDACTED]	\$ [REDACTED]
Math Error in Claimed Overpayment	[REDACTED]
Total Claimed Overpayment	\$ [REDACTED]

Based on the lack of any designation to a specific installment of estimated tax for a succeeding year, the Service applied the portion of each claimed overpayment (in excess of amounts necessary to satisfy outstanding federal tax liabilities) to [REDACTED]'s first quarterly installment of estimated tax for the succeeding taxable year under Revenue Ruling 84-58, 1984-1 C.B. 254.

Forms 2220 for Taxable Years Succeeding Years of Claimed Overpayments

On the Form 2220 (Underpayment of Estimated Tax by Corporations) attached to [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED], [REDACTED] reflected the following required installments and payments of

estimated tax:

		<u>Due Dates of Installments</u>			
Required Amount of Installment	\$		\$		\$
Less:					
Actual Payment/Credit					
Overpayment of Prior Installments					
Overpayment	\$		\$		\$

The payments and credits tax totaling \$ made by consisted of a federal tax deposit of \$, \$ of the overpayment claimed on 's Form 1120 for the year ended August 31, , and a rounding amount of \$. The payments and credits for the other installments consisted of timely federal tax deposits.

's Form 2220 for the year ended August 31, reflected the following required installments and payments of estimated tax:

		<u>Due Dates of Installments</u>			
Required Amount of Installment	\$		\$		\$
Less:					
Actual Payment					
Overpayment of Prior Installments					
Overpayment	\$		\$		\$

The claimed payments and credits totaling \$ made by included a federal tax deposit of \$ and the overpayment of \$ claimed on 's Form 1120 for the year ended August 31, . The payments and credits for the other installments consisted of timely federal tax deposits.

's Form 2220 for the year ended August 31, reflected the

following required installments and payments of estimated tax:

	<u>Due Dates of Installments</u>			
Required Amount of Installment	\$	\$	\$	\$
Less:				
Actual Payment				
Overpayment of Prior Installments				
Overpayment	\$	\$	\$	\$

The claimed payments and credits totaling \$ made by included a federal tax deposit of \$ and an overpayment of \$ as of related to 's Form 1120 for the year ended August 31, . The payment totaling \$ made by consisted of a federal tax deposit of \$ on and the overpayment of \$ claimed on 's Form 1120 for the year ended August 31, . The payments and credits for the installments made by and consisted of timely federal tax deposits.

#### Assessment and Payment of Deficiencies in Tax and Related Interest

Pursuant to Waivers of Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment (Forms 870), the Service assessed the following amounts of tax deficiencies and interest on the deficiencies from the original due date of the related return until paid by :

<u>Taxable Year Ended</u>	<u>Date Assessed</u>	<u>Amount of Tax Deficiency</u>	<u>Amount of Interest on Tax Deficiency</u>	<u>Period to Which Interest Relates</u>
		\$	\$	to
				to
				to
Total		\$	\$	

While the file contains a tape reflecting that underpayment interest on the deficiency for the year ended August 31, was computed beginning on , we cannot locate similar tapes for interest on the deficiencies reflecting the beginning date for such interest for the years ended August 31, and August 31, . However, we assume that the computations of such interest began on the original due dates of the 's Forms 1120 for the years

ended August 31, [REDACTED] and August 31, [REDACTED] as of the respective dates of [REDACTED] and [REDACTED].

[REDACTED] satisfied the deficiency and interest for the year ended August 31, [REDACTED] by [REDACTED] and the deficiencies and interest for the years ended August 31, [REDACTED] and August 31, [REDACTED] by [REDACTED].

Because each of the deficiencies exceeded \$[REDACTED], the large corporate underpayment rate under I.R.C. §6621(c) applied in determining interest on such deficiencies. Consequently, although we cannot determine the exact rate of underpayment interest applied to such deficiencies, we assume that the underpayment rate under I.R.C. §6621(c) was applied to the deficiencies assessed against [REDACTED].

Informal Refund Claim Filed by [REDACTED]

On [REDACTED], the Service received a letter dated [REDACTED] from [REDACTED] ([REDACTED]), [REDACTED]'s power of attorney, claiming that [REDACTED] was entitled to refunds of the following amounts of excessive deficiency interest and overpayment interest on such deficiency interest as of [REDACTED]:

<u>Taxable</u> <u>Year</u> <u>Ended</u>	<u>Amount of</u> <u>Excessive</u> <u>Underpayment</u> <u>Interest</u>	<u>Period to</u> <u>Which</u> <u>Related</u>	<u>Overpayment</u> <u>Interest</u> <u>to [REDACTED]</u>	<u>Total</u> <u>Claim</u>
[REDACTED]	\$ [REDACTED]	[REDACTED] - [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	\$ [REDACTED]		\$ [REDACTED]	\$ [REDACTED]

In determining the amount of excessive deficiency interest for all three years, [REDACTED] used the regular rate of underpayment interest under I.R.C. §6621(a)(2) and not the rate of underpayment interest applied to large corporate deficiencies under I.R.C. §6621(c). In determining overpayment interest, [REDACTED] used the GATT rate applicable to large corporate overpayments (more than \$10,000.00) for all three years under I.R.C. §6621(a)(1). However, for the taxable years ended August 31, [REDACTED] and August 31, [REDACTED], [REDACTED] added overpayment interest computed at the regular rate under I.R.C. §6621(a)(1) for overpayments that are not large corporate underpayments.

[REDACTED] claimed the refunds of interest based on the "use of money" principle set forth in Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978) and adopted in May Dep't Stores Co. v. United States, 78 AFTR2d 96-7034 (Fed. Cl. 1996), acq. 1997-2 C.B. 1, the

Action on Decision (AOD) related to May Dep't Stores Co. (August 4, 1997), and Revenue Ruling 88-98, 1988-2 C.B. 356. According to [REDACTED], the AOD provides that for the purposes of computing interest on subsequently determined deficiencies up to the amount of an overpayment used to satisfy installments of estimated tax, interest begins to run on the actual date of filing of the return generating the overpayment as long as the taxpayer has timely satisfied the first two installments of estimated tax.

[REDACTED]'s letter dated [REDACTED] and enclosures satisfy the requirements of a timely informal claim. See Mills v. United States, 890 F.2d 1133, 1135 (11th Cir. 1989); Am. Radiator & Standard Sanitary Corp. v. United States, 318 F.2d 915, 920 (Ct. Cl. 1963).

In its informal claim, [REDACTED] asserted that the decision in May Dep't Stores Co. requires the following results:

a. Because [REDACTED]'s second installment of estimated tax for the year ended August 31, [REDACTED] totaling \$[REDACTED] due on [REDACTED] [REDACTED] was underpaid by \$[REDACTED], only \$[REDACTED] of the overpayment of \$[REDACTED] of [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] was applied to [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] effective [REDACTED]. In addition, \$[REDACTED] of such overpayment was not used for estimated tax purposes and the Service had the use of \$[REDACTED] of the overpayment until [REDACTED] (the due date of the third installment for the year ended August 31, [REDACTED]). Consequently, with respect to the deficiency of \$[REDACTED] for the year ended August 31, [REDACTED], interest runs on such deficiency from [REDACTED] until [REDACTED] (date deficiency for the year ended August 31, [REDACTED] was satisfied).

b. Because [REDACTED]'s third and fourth installments of estimated tax for the year ended August 31, [REDACTED] due on the respective dates of [REDACTED] and [REDACTED] were underpaid in the respective amounts of \$[REDACTED] and \$[REDACTED], only \$[REDACTED] (the total of such underpayments of estimated tax) of the overpayment of \$[REDACTED] of [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] was applied to [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] effective [REDACTED] and [REDACTED]. In addition, \$[REDACTED] of such overpayment was not used for estimated tax purposes and the Service had the use of \$[REDACTED] of the overpayment until [REDACTED] (the due date of the third installment of estimated tax for the year ended August 31, [REDACTED]). Consequently, with respect to the deficiency of \$[REDACTED] for the year ended August 31, [REDACTED], interest runs on such deficiency from [REDACTED] until [REDACTED] (date deficiency for the year ended August 31, [REDACTED] was satisfied).



c. Because [REDACTED]'s third installment due on [REDACTED] of estimated tax for the year ended August 31, [REDACTED] was underpaid by \$ [REDACTED], only \$ [REDACTED] of the overpayment totaling \$ [REDACTED] of [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] was applied to [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] effective [REDACTED]. In addition, \$ [REDACTED] of such overpayment was not used for estimated tax purposes and the Service had the use of \$ [REDACTED] of the overpayment until [REDACTED] (the due date of the third installment of estimated tax for the year ended August 31, [REDACTED]). Consequently, with respect to the deficiency of \$ [REDACTED] for the year ended August 31, [REDACTED], interest runs on the deficiency from [REDACTED] until [REDACTED] (date deficiency for the year ended August 31, [REDACTED] was satisfied).

In support of [REDACTED]'s claims, [REDACTED]'s letter enclosed copies of the AOD for May Dep't Stores Co., computations for the amount of claimed interest through [REDACTED], analyses reflecting the application of overpayments to installments of estimated tax (credit elect analyses), and [REDACTED]'s Power of Attorney and Declaration of Representative (Form 2848).

Forms 843 Filed by [REDACTED]

On [REDACTED], [REDACTED] filed three Claims for Refund and Request for Abatement (Forms 843) related to a portion of the interest for each of the taxable years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED] each for "\$1 OR MORE". [REDACTED] marked each Form 843 as a "PROTECTIVE CLAIM".

The attachment to each Form 843 indicated [REDACTED]'s claims for refunds for the following amounts of interest:

<u>Taxable Year Ended</u>	<u>Amount of Excessive Interest under May Dep't Stores Co.</u>	<u>Overpayment Interest to [REDACTED]</u>	<u>Total Claim</u>
[REDACTED]	\$ [REDACTED] *	\$ [REDACTED]	\$ [REDACTED]
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

\* While the attachment to Form 843 reflected excessive deficiency interest of \$ [REDACTED], the attached computation of excessive deficiency interest reflected only \$ [REDACTED]. Consequently, we assume that the amount in the computation is [REDACTED]'s intended claim amount.

█████'s computation of the excessive interest is based on regular underpayment interest rates under I.R.C. §6621 and not the underpayment rate for large corporate deficiencies under I.R.C. §6621(c). In addition, █████ used GATT rates on corporate overpayments that exceed \$10,000.00 for computing applicable overpayment interest.

The amounts set forth in such attachments are in addition to the amounts previously requested in █████'s informal claim (█████'s letter dated █████) under the authority of May Dep't Stores Co. While the cover letter and attachments to such Forms 843 referred to the "use of money" principle set forth in Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978) and May Dep't Stores Co. v. United States, 78 AFTR2d 96-7034 (Fed. Cl. 1996), acq. 1997-2 C.B. 1, such documents indicated that █████'s claim for the additional interest was based on the decision in Sequa Corp. v. United States, 83 AFTR2d 99-2179 (S.D.N.Y. 1998).

█████ filed its Forms 843 as protective claims for two reasons: (a) the uncertainty of the Service's position after the government's withdrawal of its notice of appeal in Sequa Corp.; and (b) the anticipated revision of Revenue Ruling 88-98, 1988-2 C.B. 356, to address claims made under Sequa Corp. In addition, █████ requested that the Service not act upon its formal claims until the issues involved in Sequa are finally resolved. At that time, █████ would make any appropriate amendments to perfect its Forms 843.

In the attachments to its Forms 843, █████ asserted that the decision in Sequa Corp. requires the following results:

a. Because █████'s second installment of estimated tax for the year ended August 31, █████ totaling \$█████ due on █████ was underpaid by \$█████, only \$█████ of the overpayment of \$█████ of █████'s Form 1120 liability for the year ended August 31, █████ was applied to █████'s Form 1120 liability for the year ended August 31, █████ effective █████. In addition, \$█████ of such overpayment was not used for estimated tax purposes and the Service had the use of \$█████ of the overpayment until █████ (the unextended due date for █████'s Form 1120 for the year ended August 31, █████). Consequently, with respect to the deficiency of \$█████ for the year ended August 31, █████, interest runs on such deficiency from █████ until █████.

b. Because [REDACTED]'s third and fourth installments of estimated tax for the year ended August 31, [REDACTED] totaling \$[REDACTED] due on the respective dates of [REDACTED] and [REDACTED] were underpaid in the respective amounts of \$[REDACTED] and \$[REDACTED], only \$[REDACTED] of the overpayment of \$[REDACTED] of [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] was applied to [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] effective [REDACTED] and [REDACTED]. In addition, \$[REDACTED] of such overpayment was not used for estimated tax purposes and the Service had the use of \$[REDACTED] of the overpayment until [REDACTED] (the unextended due date for [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED]). Consequently, with respect to the deficiency of \$[REDACTED] for the year ended August 31, [REDACTED], interest runs on such deficiency from [REDACTED] until [REDACTED].

c. Because [REDACTED]'s third installment due on [REDACTED] of estimated tax for the year ended August 31, [REDACTED] was underpaid by \$[REDACTED], only \$[REDACTED] of the overpayment totaling \$[REDACTED] of [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] that was applied to [REDACTED]'s Form 1120 liability for the year ended August 31, [REDACTED] effective [REDACTED]. In addition, \$[REDACTED] of such overpayment was not used for estimated tax purposes and the Service had the use of \$[REDACTED] of the overpayment until [REDACTED] (the unextended due date for [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED]). Consequently, with respect to the deficiency of \$[REDACTED] for the year ended August 31, [REDACTED], interest runs on \$[REDACTED] of such deficiency from [REDACTED] until [REDACTED] and on \$[REDACTED] of such deficiency from [REDACTED] until [REDACTED].

Pursuant to [REDACTED]'s request, the Examination Division suspended action on [REDACTED]'s formal claims.

Correspondence Supplementing [REDACTED]'s Forms 843

By [REDACTED]'s letter dated [REDACTED], [REDACTED] requested that the Examination Division request Field Service Advice (FSA) on [REDACTED]'s formal "protective claims" filed [REDACTED] under the authority of Sequa Corp. In addition, such letter perfected [REDACTED]'s Forms 843 by increasing the amount of the related claimed refunds for the overpayment interest that accrued from [REDACTED] through [REDACTED].

██████████ to the following amounts:

<u>Year Ended</u>	<u>Amount of Excessive Interest under May Dep't Stores Co.</u>	<u>Overpayment Interest to ██████████</u>	<u>Total Claim</u>
██████████	\$ ██████████ *	\$ ██████████	\$ ██████████
Total	\$ ██████████	\$ ██████████	\$ ██████████

\* Amount includes excessive deficiency interest of \$ ██████████ under May Dep't Stores Co. and GATT overpayment interest of \$ ██████████. The overpayment interest of \$ ██████████ equals the amount of overpayment interest asserted by ██████████ to be due on the excessive interest under May Dep't Stores Co. and previously claimed in ██████████'s informal claim received by the Service on ██████████.

██████████'s letter enclosed copies of ██████████'s relevant Forms 2220, credit elect analyses, computations of interest through ██████████ and FSA Nos. 199910014 (December 7, 1998) and 199918040 (February 8, 1999). The interest computations used regular interest rates applicable to underpayments under I.R.C. §6621(a)(2) to determine the excessive interest charged on the deficiency in tax for the year ended August 31, ██████████. In determining overpayment interest, the computations used the GATT overpayment rate to determine overpayment interest for all three years. However, for the taxable years ended August 31, ██████████ and August 31, ██████████, ██████████ added overpayment interest computed at the regular rate under I.R.C. §6621(a)(1) for overpayments that are not large corporate underpayments.

Although such letter refers to the date of ██████████'s Forms 843 filed under May Dep't Stores Co. (██████████), the use of the phrase "protective claims" and amounts set forth and computations attached to ██████████'s letter dated ██████████, reflect that such claim intended to perfect ██████████'s Forms 843 under Sequa Corp. filed ██████████.

Such letter stated that the "use of money" principle discussed in Avon Products, Inc., May Dep't Stores Co., and FSA Nos. 199910014 (December 7, 1998) and 199918040 (February 8, 1999) provide that a subsequently determined deficiency for the year generating the overpayment which is the subject of a credit election begins to accrue interest when and only to the extent that a credit election is needed to satisfy other liabilities of ██████████.

By ██████████'s letter dated ██████████, ██████████ supplemented the legal authority for its formal claims with copies of FSAs Nos. 199930031

(February 8, 1999) and 199930007 (April 6, 1999).

█'s Credit-Elect Analyses

█'s credit elect analyses submitted in support of the informal claim and Forms 843 (as amended and supplemented by █'s letters dated █ and █) reflect the following:

Overpayment of \$ █ for Year Ended August 31, █

Due Dates of Installments

	█	█	█	█
Installment Due	\$ █	\$ █	\$ █	\$ █
Less:				
Amount Paid	█	█	█	█
Overpayment	(\$ █)		(\$ █)	(\$ █)
Underpayment		\$ █		
Overpayment From Prior Installments		█		
Overpayment Credit Used		\$ █		
Unused Credit Available as of Date Form 1120 for Year Ended █ Filed				\$ █

Overpayment of \$ [REDACTED] from Taxable Year Ended August 31, [REDACTED]

Due Dates of Installments

	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Required Amount of Installment	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Less:				
Amount Paid	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Overpayment	[REDACTED]	[REDACTED]		
Underpayment			\$ [REDACTED]	\$ [REDACTED]
Less:				
Overpayment From First Installment			[REDACTED]	
Overpayment From Second Installment			[REDACTED]	

Overpayment Credit Used \$ [REDACTED]\* \$ [REDACTED]  
Unused Credit Available as of Date of Filing of Form 1120 for Year Ended [REDACTED] \$ [REDACTED]\*

\* [REDACTED]'s computation reflects a mathematical error of \$ [REDACTED]. The correct amount of the overpayment credit for the year ended August 31, [REDACTED] that was necessary to satisfy [REDACTED]'s installment of estimated tax due on [REDACTED] was only \$ [REDACTED]. Consequently, based on such mathematical error, the unused credit available as of the date of filing of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED] was \$ [REDACTED]. However, the error will not affect the computation of interest on any deficiency for the year.

Overpayment of \$ [REDACTED] from Taxable Year Ended August 31, [REDACTED]

	Due Dates of Installments			
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Required Amount of Installment	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Less:				
Amount Paid	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Overpayment	[REDACTED]	[REDACTED]		[REDACTED]
Underpayment			\$ [REDACTED]	
Less:				
Overpayment From First Installment			[REDACTED]	
Overpayment From Second Installment			[REDACTED]	
Overpayment Credit Used			\$ [REDACTED]	
Unused Credit Available as of Date of Filing of Form 1120 for Year Ended [REDACTED]				\$ [REDACTED]

[REDACTED]'s credit elect analyses reflect that [REDACTED] does not dispute the Service's application of portions of [REDACTED]'s claimed overpayments to [REDACTED]'s outstanding federal tax liabilities and determination of the mathematical error for the year ended August 31, [REDACTED]. In addition, [REDACTED]'s analyses do not result in any estimated tax penalty under I.R.C. §6655 for any installments of estimated tax for any year.

Abatement of Interest under May Dep't Stores Co. and Related Refunds

Under the decision of May Dep't Stores Co. and related AOD, the Examination Division agreed that excessive interest had been charged on the deficiencies for all three disputed years. Consequently, the Service allowed [REDACTED]'s informal claim filed [REDACTED] by abating a portion of the interest for all three disputed years.

With the exception of the commencement date for the accrual of interest on the deficiency for the year ended August 31, [REDACTED], the Examination Division agreed with [REDACTED]'s asserted commencement dates for the accrual of interest on the deficiencies for the years ended August 31, [REDACTED] ([REDACTED]) and August 31, [REDACTED] ([REDACTED]) under May Dep't Stores Co.

With respect to the year ended August 31, [REDACTED], the Examination Division determined that [REDACTED] improperly commenced the accrual of interest as of [REDACTED] (the due date of the third installment of estimated tax for the year ended August 31, [REDACTED]) on the deficiency for the year ended August 31, [REDACTED]. The Examination Division determined that because a portion of the overpayment for the year

ended August 31, [REDACTED] was used to pay the second installment of estimated tax for the year ended August 31, [REDACTED] on [REDACTED] and May Dep't Stores Co. and the related AOD would allow interest to be computed from [REDACTED]. Consequently, the Examination Division recomputed the amount of interest on the deficiency for the year ended August 31, [REDACTED] based on the accrual of interest commencing on [REDACTED].

In addition to the improper date for commencement of interest for the year ended August 31, [REDACTED], the Examination Division's computation reflected that [REDACTED] had overstated the excessive portion of the assessed deficiency interest. The Service's computation reflected that only the following reductions to assessed interest were appropriate:

<u>Year Ended</u>	<u>Amount of Interest Originally Assessed</u>	<u>Recomputed Interest</u>	<u>Reduction in Interest</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED] *
Total	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED] *

\* This amount is determined without regard to the erroneous crediting of interest of \$ [REDACTED] to [REDACTED] on [REDACTED] which was reversed on [REDACTED].

The amounts of assessed deficiency interest for the years ended August 31, [REDACTED] and August 31, [REDACTED] were the respective amounts of \$ [REDACTED] and \$ [REDACTED]. Consequently, the assessed interest set forth above for the years ended August 31, [REDACTED] and August 31, [REDACTED] reflect the following previous abatements of interest:

<u>Year Ended</u>	<u>Date</u>	<u>Amount Abated</u>
[REDACTED]	[REDACTED]	\$ [REDACTED]
Total Previous Abatements		\$ [REDACTED]

We do not know the basis of such previous abatements.

Although we do not know the basis of the reason for the difference between the Service's and [REDACTED]'s computations of interest (with the exception of [REDACTED]'s use of an improper commencement date for interest accrual for the year ended August 31, [REDACTED]), possible reasons could be the fact that [REDACTED]'s computations failed to reflect



that the deficiencies constituted large corporate underpayments subject to the higher interest rate under I.R.C. §6621(c) and [REDACTED]'s use of regular overpayment rates under I.R.C. §6621(a)(1) for the years ended August 31, [REDACTED] and August 31, [REDACTED].

On [REDACTED], the Service abated the assessed interest pursuant to its determination of excessive interest. With the exception of an input error of \$[REDACTED] in the abatement of \$[REDACTED] for the year ended August 31, [REDACTED], the abatements match the Service's determination of the appropriate reductions under May Dep't Stores Co.

This office has not verified the accuracy of the rates of underpayment and overpayment interest used by the Examination Division in determining the amounts of such abatements.

On [REDACTED], as the result of such abatements, the Service issued the following refunds of interest:

<u>Year Ended</u>	<u>Total Refund</u>	<u>Overpayment Interest Included in Refund</u>
[REDACTED]	\$ [REDACTED]*	\$ [REDACTED]*
Total	\$ [REDACTED]	\$ [REDACTED]

\* Reflects the reversal of the previous erroneous crediting of interest of \$ [REDACTED] to [REDACTED] on [REDACTED]

The Service determined overpayment interest on such refunds through [REDACTED].

[REDACTED] has not written or voiced any objection to the amount of such refund under May Dep't Stores Co.

#### Miscellaneous Facts and Assumptions

[REDACTED] timely filed its informal claim and Forms 843 led within two years of [REDACTED]'s payment of the disputed interest under I.R.C. §6511(a) and §6511(b)(2)(B).

In [REDACTED]'s informal claim ([REDACTED]'s letter dated [REDACTED] and amendment to Forms 843 (dated [REDACTED]), [REDACTED] asserted that additional overpayment interest would accrue after the computation dates in each document if the Service did not issue refunds to [REDACTED] within 45 days of the Service's receipt of such documents.

For the years in issue, [REDACTED] could roll forward any overpayment

of an installment to the next installment to avoid assertion of an estimated tax penalty.

The Service does not challenge [REDACTED]'s method of computation or timeliness of its required installments of estimated tax for any of the relevant taxable years. Consequently, no estimated penalty has been asserted against [REDACTED].

In the event that [REDACTED]'s assertions under Sequa Corp. are correct, we have not verified the accuracy of the Service's application of interest rates to determine the accuracy of the refunds already issued to [REDACTED]. However, if [REDACTED]'s assertions are correct, [REDACTED]'s failure to use the rate under I.R.C. §6621(c) for large corporate deficiencies in determining any excessive interest charged in the deficiencies could result in overstatements of such excessive interest for the disputed years.

[REDACTED] clearly identified the issues under May Dep't Stores Co. and Sequa Corp.

[REDACTED] has not raised the applicability of the provisions of recently enacted I.R.C. §6621(d). However, even if [REDACTED] made such an assertion, our National Office has concluded that the provisions of Treasury Regulations §301.6402-3(a)(5) and §301.6611-1(h)(2)(vii) preclude the applicability of I.R.C. §6621(d) to any case involving the application of an overpayment to the succeeding year's estimated taxes. See FSA No. 199910014 ([REDACTED]).

[REDACTED] has not asserted that any portion of the overpayments is to be moved or considered applied beyond the date that [REDACTED] filed the return for the succeeding year under an extended due date.

We do not know the reason for [REDACTED]'s addition of overpayment interest computed at the regular overpayment rate for the years ended August 31, [REDACTED] and August 31, [REDACTED] in its computations of excessive interest submitted with its informal claim and Forms 843. However, [REDACTED]'s computations of overpayment interest may be an attempt to claim overpayment interest on the portion of the overpayments that was not used to satisfy installments of estimated tax for succeeding taxable years. However, taxpayers are explicitly denied interest on an overpayment that has been applied to estimated tax for the succeeding year under the provisions under I.R.C. §6513(d). See Treas. Regs. §301.6402-3(a)(5), §301.6402-3(a)(6), and §301.6611-1(h)(2)(vii); Martin Marietta Corp. v. United States, 572 F.2d 839, 841 - 842 (Ct. Cl. 1978) (taxpayer not allowed to recover interest on amount of overpayment for 1968 applied to estimated tax for 1969 under taxpayer's election); Avon Products, Inc. v. United States, 588 F.2d 342, 345 (2d Cir. 1978) (taxpayer never attempted to collect interest).

### Issue - Legal Discussion

Income tax is required to be paid at the time prescribed for filing of the related income tax return. I.R.C. §6151(a); Treas. Reg. §1.6151-1(a). However, for purposes of I.R.C. §6601(a), the last date prescribed for payment of tax is determined without regard to any extension of time for filing the return. I.R.C. §6151(a) and §6601(b)(1).

Without regard to the extension allowable under I.R.C. §6081(b) and Treasury Regulations §1.6081-1 and §1.6081-3, a corporate taxpayer's income tax return is due on the fifteenth day of the third month after the end of such taxpayer's taxable year. I.R.C. §6072(b); Treas. Reg. §1.6072-2(a). Consequently, under the provisions of I.R.C. §6151(a) and §6601(b)(1), a corporate taxpayer's income tax is due by the original (unextended) due date of the related income tax return.

When interest applies to an underpayment of tax under I.R.C. §6601(a), interest generally is paid at the rate in effect under I.R.C. §6621(a)(2). However, interest that applies to large corporate underpayments is a higher rate than applied to other tax underpayments. I.R.C. §6621(c). A large corporate underpayment for any taxable period is an amount of income tax that exceeds \$100,000.00. I.R.C. §6621(c)(3).

### When Interest Accrues

Interest on an underpayment of tax accrues from the last date prescribed for payment of the tax to the date that the tax is paid. I.R.C. §6601(a).

The purpose of interest under I.R.C. §6601 is to compensate the government for the delay in payment of tax during the period during which the government was deprived of the use of the tax payment. United States v. Childs, 266 U.S. 304, 309 - 310 (1924); Avon Products, Inc. v. United States, 588 F.2d 342, 343 (2d Cir. 1979); Vick v. Phinney, 414 F.2d 444, 448 (5th Cir. 1969); Sequa Corp. v. United States, 83 AFTR2d 99-2179 (S.D.N.Y. 1998). Consequently, interest under I.R.C. §6601(a) is charged only when a tax becomes both due and unpaid. See Avon Products, Inc., 588 F.2d at 344; Kimberley-Clark Tissue Co. v. United States, 79 AFTR2d 97-1568 (E.D. Pa. 1997); Sequa Corp., 83 AFTR2d 99-2179; Rev. Rul. 88-98, 1988-2 C.B. 356, 357 (following Avon Products, Inc. absent contrary statutory or regulatory authority).

Based on the compensatory purpose of interest, the courts have adopted a "use of money" principle in determining when a tax becomes

due and unpaid for purposes of computing the appropriate amount of interest to charge. See Avon Products, Inc., 588 F.2d at 344, 346 (payments made by extended prescribed payment date under former I.R.C. §6152(a)(1)(B) and Treasury Regulation §1.6152-1(2)); May Dep't Stores Co. v. United States, 78 AFTR2d 96-7034 (Fed. Cl. 1996), acq. 1997-2 C.B. 1, AOD (CC-1997-008) (August 4, 1997) (interest on additional tax reported on taxpayer's Form 1120X).

Under the "use of money" principle, interest on an underpayment of tax is charged only for the time during which the taxpayer "had the use of funds which rightfully belonged to the United States". See Avon Products, Inc., 588 F.2d at 344, 346; Brookhurst, Inc. v. United States, 931 F.2d 554, 557 - 558 (9th Cir.), cert. denied, 502 U.S. 907 (1991) (interest properly assessed from date taxpayer received erroneous refund check that taxpayer cashed (May 10, 1984) until paid (March 1987)); Central Fibre Products Co. v. United States, 115 F. Supp. 147, 149 - 150 (N.D. Ill. 1953) (disallowed interest on \$65,557.61 charged on deficiency of \$100,510.04 for 1944 for the period from September 1944 to June 1945 because \$65,557.61 of the timely payments for 1944 was not refunded until July 1945); May Dep't Stores Co., 78 AFTR2d 96-7034.

Under such principle, a tax is not considered due and unpaid during the time that the government has not been deprived of the use of tax money with respect to a specific tax liability. Avon Products, Inc., 588 F.2d at 344, 346 (government possessed payments made by extended prescribed payment date under former I.R.C. §6152(a)(1)(B) and Treasury Regulation §1.6152-1(2) until payments shifted to succeeding year's income tax liability through election under I.R.C. §6513(d)); Central Fibre Products Co., 115 F. Supp. at 149 - 150 (government possessed payment until refunded to taxpayer); Eagle-Picher Indus., Inc. v. United States, 43 AFTR2d 79-947 (S.D. Ohio 1979) (government possessed payments made by extended prescribed payment date under former I.R.C. §6152(a)(1)(B) and Treasury Regulation §1.6152-1(2) until payments shifted to succeeding year's income tax liability through election under I.R.C. §6513(d)); May Dep't Stores Co., 78 AFTR2d 96-7034.

Effect on Computation of Underpayment Interest on Tax Deficiency for Taxable Year of Previously Reported Income Tax Overpayment of Overpayment Transferred under I.R.C. §6513(d) to Satisfy Estimated Tax Liability for Succeeding Year

Under the "use of money" principle, the courts hold that interest on a deficiency in tax related to a previously filed income tax return which reported an overpayment and elected to transfer such overpayment to the taxpayer's obligation to make an estimated tax payment for a succeeding year does not begin to accrue until the date that the overpayment is effective as a credit toward or payment of

the liability for the subsequent year. Avon Products, Inc., 588 F.2d at 344, 346 (no interest accrued on deficiency of \$98,602.17 for year ended December 31, 1967 until taxpayer filed its Form 1120 for such year on September 15, 1968 on which the taxpayer elected to transfer overpayment of \$115,626.32 to the installment of its 1968 liability due on September 15, 1968); Eagle-Picher Indus., Inc., 43 AFTR2d 79-947 (no interest accrued on deficiencies for the respective years ended November 30, 1970 and November 30, 1971 before the respective dates of filing of related returns on August 15, 1971 and August 15, 1972); Kimberley-Clark Tissue Co., 79 AFTR2d 97-1568 (interest properly commenced on date that overpayment of 1983 taxes directed to be applied to taxpayer's estimated taxes for 1984 on filing of 1983 return on September 17, 1984 and not due date of 1983 return or due date of first installment of 1984 estimated tax).

Service's Guidelines for Determining Deficiency Interest Since 1997

Since the decision in May Dep't Stores Co. and the related AOD (issued August 4, 1997), the Service promulgated the following relevant guidelines related to the handling of overpayments that are the subject of elections under I.R.C. §6513(d) in the determination of underpayment interest on deficiencies and timely refund claims involving any excessive underpayment interest on such deficiencies:

- a. For deficiency interest purposes, where a taxpayer does not initially designate a reported overpayment to satisfy a particular installment of estimated tax for the following year, and crediting of the return overpayment is not necessary to fully pay an installment of estimated tax due prior to the filing of the prior year's return, the reported overpayment will not be deemed to be credited to an installment of estimated tax due before the filing of the prior year's return.
- b. Revenue Ruling 88-98, which requires the crediting of the overpayment to the first installment of estimated tax for the subsequent year when a taxpayer fails to make a designation; will not be followed to the extent that it would require a different result than achieved in May Dep't Stores Co. and the facts are the same as in the preceding sentence.
- c. If the taxpayer fully paid the second and third installments of estimated tax (the same fact pattern in May Dep't Stores Co.), interest on the underpayment up to amount of credit elect begins to accrue from the date of the third installment of estimated tax for the succeeding taxable year.

- d. Interest on any deficiency (up to amount of credit elect) begins from the date of the estimated tax installment that the credit elect was originally applied to.

Field Service Advisory Memoranda Issued Before Revenue Ruling 99-40

Before October 4, 1999, the Service had issued at least eight FSAs to individual taxpayers related to the determination of deficiency interest when a case involves overpayments which are the subject of elections under I.R.C. §6513(d). See FSA Nos. 199910014 (December 7, 1998), 199930031 (February 8, 1999), 199918040 (February 8, 1999), 199920010 (February 10, 1999), 199930007 (April 6, 1999), 199930008 (April 13, 1999), 199952006 (August 30, 1999), and 199952008 (September 13, 1999).

Although FSAs are not to be cited as precedent and are not binding on Examination or Appeals, such FSAs reflect relevant guidelines for the commencement of interest under I.R.C. §6601 on a subsequently determined deficiency. These guidelines are as follows:

- a. The date from which interest begins to run on an underpayment determined by the Service after a taxpayer reported an overpayment and applied that overpayment to the estimated taxes for the following year depends on whether the deficiency exceeds the reported overpayment. FSA No. 199910014.
- b. After application of estimated tax payments, an overpayment may be split between installments and applied as needed to satisfy all or part of the amount payable on the installment due date so as to avoid estimated tax penalties FSA No. 199910014.
- c. When an overpayment is split between installments of estimated tax, the taxpayer receives the use of its money at different times depending on the installments to which the overpayment is applied and deficiency interest computations take into account the manner in which the overpayment was split. FSA Nos. 199910014, 199952008 (note 3), and 199952006 (note 5).
- d. If the subsequently determined deficiency is equal to or less than the overpayment, interest will be assessed on the deficiency as of the dates that the overpayment is applied to the succeeding year's estimated taxes. FSA Nos. 199910014, 199952006, and 199952008.
- e. To the extent that the overpayment is not needed to satisfy specific installments of estimated tax, the overpayment is treated as a payment of the succeeding year's tax and interest will be assessed on the deficiency as of the unextended due date of the succeeding year's income tax return. FSAs Nos. 199910014,

199918040, 199920010, 199930031, 199930007, 199930008, 199952006, and 199952008.

f. If a portion of the overpayment is needed to satisfy an installment of estimated tax for a succeeding tax year, it is applied to that succeeding tax year's liability as of the due date of the installment. FSA No. 19920010.

g. To the extent that overpayment is not needed to satisfy any installments of estimated tax for succeeding year, it should be applied to that year's income tax liabilities as of the unextended due date of that return. FSA Nos. 199910014, 19920010, and 199952006.

While all of the eight FSAs reflected the Service's position in light of May Dep't Stores Co., none of the FSAs referred to Sequa Corp.

#### Revenue Ruling 99-40

On October 4, 1999, the Service issued Ruling 99-40 to provide guidance for determining interest under I.R.C. §6601(a) on a deficiency for the overpayment year determined after the overpayment claimed on the return for such overpayment year is credited to the succeeding year's estimated tax. The Service issued Revenue Ruling 99-40 in light of the AOD on the decision in May Dep't Stores Co., but such ruling did not address the decision in Sequa Corp. Such guidance superceded previous rulings (including Rev. Rul. 88-98) and formally adopted the guidelines set forth in previous FSAs.

In Revenue Ruling 99-40, the Service specifically held that when a taxpayer claims an overpayment on its tax return and the overpayment is credited to succeeding year's estimated tax, interest under I.R.C. §6601(a) will be assessed as follows:

- a. On the portion of a subsequently determined deficiency for the overpayment year that is less than or equal to the overpayment, interest is assessed as of the date on which the overpayment is applied to the succeeding year's taxes.
- b. On the remaining portion of such deficiency, interest is assessed as of the unextended due date of the tax for the overpayment return year.

See 1999-40 I.R.B. 441, 443 (October 4, 1999).

In addition to its specific holdings, Revenue Ruling 99-40 set forth the following guidelines for determining deficiency interest under I.R.C. §6601 after a taxpayer elects to apply an overpayment to

the succeeding year's estimated taxes:

- a. The date that an overpayment becomes a payment on account of the succeeding year's estimated tax determines the date the prior year's tax became unpaid for purposes of I.R.C. §6601(a).
- b. The overpayment is applied to unpaid installments of estimated tax due on or after the date(s) the overpayment arose, in the order in which they are required to be paid to avoid an addition to tax under I.R.C. §6655 (estimated tax penalties) with respect to such year.
- c. Since the overpayment will be applied in the order necessary to avoid estimated tax penalties, designation of all or part of the overpayment to a specific estimated tax installment is unnecessary and the Service will not accept such designations after October 4, 1999.

See 1999-40 I.R.B. 442 - 443.

Service's Litigation Position

On November 9, 1999, the Office of Chief Counsel (Chief Counsel) issued a Notice that stated that the Service "will no longer litigate cases where the taxpayer elected to credit its reported overpayment to its estimated tax for the succeeding year and interest was assessed on a deficiency, or portion thereof, that is equal to or less than the claimed overpayment before the claimed overpayment, or a portion thereof, was needed to avoid an addition to tax for failure to pay estimated tax". See Chief Counsel Notice N(35)000-168.

Such Chief Counsel Notice reiterated the general guidelines of Revenue Ruling 99-40 issued after the Service's consideration of the decision in May Dep't Stores Co.

Such notice also provided the following guidelines for determining whether the overpayment was needed to avoid an addition to tax for failure to pay estimated tax under I.R.C. §6655:

- a. Secure information from relevant transcripts of account, returns, and Forms 2220, as to (a) when the tax became overpaid; (b) what, if any, payments of estimated tax the taxpayer made for the succeeding taxable year; (c) the date which such payments for the succeeding year were made; (d) the taxpayer's reported total tax for the succeeding taxable year; and (e) the method by which the amount of the taxpayer's required installments of estimated tax were determined for purposes of I.R.C. §6655.



b. Based on the secured information, determine the amount of each of the taxpayer's required installments of estimated tax for the succeeding taxable year.

c. If the amount of the taxpayer's required first installment is equal to or less than the amount of any payments of estimated tax made by the due date of the first installment, not including the credited overpayment, the taxpayer did not need the overpayment to avoid an estimated tax penalty for failure to pay the first installment of estimated tax.

d. For the second required installment, all payments made by the due date for that installment, not including the credited overpayment, are added together and, if the total payments exceed the sum of the first two installments, the taxpayer did not need the overpayment to avoid the estimated tax penalty. Similar calculations are made for the third and fourth installments.

e. If, however, the amount of any of the taxpayer's required installments exceeds the amount of all payment of estimated tax made by the due date for that installment, not including the credited overpayment, the taxpayer needed the overpayment (or a portion thereof) to avoid the estimated tax penalty for failure to pay an installment of estimated tax. Thus, the overpayment is reduced by the amount that the required installment exceeds the amount of all other payments made on or before the installment due date. If the remaining overpayment is less than the determined deficiency, underpayment interest will accrue on the difference from the due date of the installment until the date that the deficiency is paid.

However, Chief Counsel Notice N(35)000-168 did not refer to the decision in Sequa Corp.

#### Issue - Application of Law to Facts

The Service assessed more than the proper amount of deficiency interest allowable under I.R.C. §6601(a) against [REDACTED] for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED], because the Service was not deprived of the use of the related tax payments during the entire period for which interest was charged. Consequently, under the "use of money" principle adopted by the federal courts and the guidelines of Revenue Ruling 99-40 and Chief Counsel Notice N(35)000-168 and subject to caveats discussed below, [REDACTED] is entitled to refunds of deficiency interest assessed for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED] in excess of the interest previously refunded under the authority of May Dep't Stores Co. and the related AOD. While Revenue Ruling 99-40 and Chief Counsel Notice N(35)000-168 were not formal statements of the

Service's position in response to the decision in Sequa Corp., such ruling and Chief Counsel notice provide authority for appropriate abatements and refunds of excessive interest charged under I.R.C. §6601 with respect to [REDACTED]'s Forms 843 filed [REDACTED] and perfected on [REDACTED] and supplemented [REDACTED].

[REDACTED]'s credit elect analyses and Forms 2220 for the succeeding the year of the claimed overpayment and the Service's records as to payments and credits for each relevant year reflect the extent to which Service charged [REDACTED] excessive underpayment interest under I.R.C. §6601(a). In summary, such documents reflect the following with respect to the disputed overpayments applied to the Form 1120 liability for the subsequent year:

<u>Year Ended</u>	<u>Total Applied Overpayment</u>	<u>Amount Used to Satisfy Installment of Estimated Tax</u>	<u>Installment Number/ Due Date</u>	<u>Unused Portion</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	Second - [REDACTED]	\$ [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Third - [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Fourth - [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	\$ [REDACTED]	Third - [REDACTED]	[REDACTED]

For the year ended August 31, [REDACTED], such documents reflect that \$ [REDACTED] of the claimed overpayment was available to satisfy the subsequently determined deficiency for the year of only \$ [REDACTED] until the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED] on [REDACTED]. Because the unused portion of the overpayment claimed for the year ended August 31, [REDACTED] exceeded the subsequently determined deficiency, the Service was not deprived of the use of such funds until November 15, [REDACTED] (the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED]). Consequently, under Revenue Ruling 99-40 and Chief Counsel Notice N(35)000-168, interest under I.R.C. §6601 properly accrued on the deficiency for the year ended August 31, [REDACTED] from [REDACTED] until [REDACTED] (date of satisfaction).

For the year ended August 31, [REDACTED], such documents reflect that \$ [REDACTED] of the claimed overpayment was available to satisfy the subsequently determined deficiency for the year of only \$ [REDACTED] until the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED] on [REDACTED]. Because the unused portion of the overpayment claimed for the year ended August 31, [REDACTED] exceeded the subsequently determined deficiency, the Service was not deprived of the use of such funds until [REDACTED] (the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED]). Consequently, under Revenue Ruling 99-40 and Chief Counsel Notice N(35)000-168, interest under I.R.C. §6601 did not commence to accrue

on the deficiency for the year ended August 31, [REDACTED] until [REDACTED]  
[REDACTED] until [REDACTED] (date of satisfaction).

For the year ended August 31, [REDACTED], such documents reflect that only \$[REDACTED] of the claimed overpayment was available to satisfy the subsequently determined deficiency for the year of \$[REDACTED] as of the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED] on [REDACTED] and that \$[REDACTED] of the overpayment totaling \$[REDACTED] was needed to satisfy the third installment of [REDACTED]'s estimated tax liability for the year ended August 31, [REDACTED] due in [REDACTED]. Because the deficiency for the year ended August 31, [REDACTED] exceeded the unused portion of the overpayment claimed on the return for such year (\$[REDACTED]), the Service was not deprived of the use of only \$[REDACTED] of the overpayment to satisfy the deficiency until [REDACTED] (the unextended due date of [REDACTED]'s Form 1120 for the year ended August 31, [REDACTED]). However, the Service was deprived of the use of the overpayment to pay \$[REDACTED] of the deficiency (\$[REDACTED] less \$[REDACTED]) on [REDACTED] (the date \$[REDACTED] was applied to the third installment of estimated tax for the year ended August 31, [REDACTED]). Consequently, under Revenue Ruling 99-40 and Chief Counsel Notice N(35)000-168, interest under I.R.C. §6601 accrued on the deficiency for the year ended August 31, [REDACTED] from the following dates until [REDACTED]:

<u>Portion of Deficiency</u>	<u>Date Interest Began to Accrue</u>
------------------------------	--------------------------------------

\$ [REDACTED]	[REDACTED]
\$ [REDACTED]	

Conclusion and Recommended Action

Based on the above discussion, we conclude that underpayment interest under I.R.C. §6601 for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED] accrued on such deficiencies as follows:

<u>Year Ended</u>	<u>Total Deficiency</u>	<u>Portion of Deficiency Subject to Interest</u>	<u>Proper Period for Accrual</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	[REDACTED] - [REDACTED]

To determine the extent to which the unabated portion of the Service's assessments of deficiency interest under I.R.C. §6601 is

excessive under I.R.C. §6601, we recommend that the Examination Division take the following actions for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED]:

- a. Recompute applicable deficiency interest based on the preceding interest accrual dates and using the applicable underpayment rate provided for large corporate underpayments in I.R.C. §6621(c).
- b. Subtract the recomputed interest determined in the preceding paragraph from the unabated deficiency interest that remains in the accounts for [REDACTED]'s Form 1120 liabilities for the years ended August 31, [REDACTED], August 31, [REDACTED], and August 31, [REDACTED].

Once the extent to which the unabated portion of the Service's assessments of deficiency interest for each year is determined to be excessive under I.R.C. §6601, make appropriate adjustments to [REDACTED]'s Form 1120 liabilities for the years in issue to avoid the issuance of multiple refunds for the same excessive interest and overpayment interest. If the unabated interest exceeds the recomputed interest, take action to abate such excess. If the recomputed interest exceeds the unabated interest, add the excess.

After adjustments to avoid multiple refunds for the same interest, issue appropriate refunds. However, before issuing such refunds, ensure (a) that overpayment interest is not paid on any portion of the overpayments applied to estimated tax for a succeeding year under Treasury Regulations §301.6402-3(a)(5), §301.6402-3(a)(6), and §301.6611-1(h)(2)(vii); (b) that overpayment interest on any excessive deficiency interest is paid at the proper regular and GATT overpayment rates; and (c) that the overpayment interest previously paid to [REDACTED] (through [REDACTED]) is taken into account in determining the proper amounts of overpayment interest to be paid to [REDACTED].

Because no further action is required by this office, we are closing our file.

If you have any questions, please contact me at 404/338-7943.

  
CAROLYN LEE ROUNTREE  
Special Litigation Assistant

cc: TL Cats

cc: Mr. Roy Allison  
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